

## Internal Revenue Service, Treasury

## § 1.1502-26

consolidated return years are not determined separately. Instead, the consolidated net section 1231 gain or loss is determined under this section for the group as a whole.

(b) *Example.* The following example illustrates the provisions of this section:

*Example. Use of SRLY registers with net gains and net losses under section 1231.* (i) In Year 1, T sustains a \$20 net capital loss. At the beginning of Year 2, T becomes a member of the P group. T's capital loss carryover from Year 1 is subject to SRLY limits under §1.1502-22(c). The members of the P group contribute the following to the consolidated taxable income for Year 2 (computed without regard to T's net capital loss carryover under §1.1502-22):

	P	T
<b>Year 1 (SRLY)</b>		
Ordinary .....	.....	.....
Capital .....	.....	(20)
<b>Year 2</b>		
Ordinary .....	10	20
Capital .....	70	0
§ 1231 .....	(60)	30

(ii) Under section 1231, if the section 1231 losses for any taxable year exceed the section 1231 gains for such taxable year, such gains and losses are treated as ordinary gains or losses. Because the P group's section 1231 losses, \$(60), exceed the section 1231 gains, \$30, the P group's net loss is treated as an ordinary loss. T's net section 1231 gain has the same character as the P group's consolidated net section 1231 loss, so T's \$30 of section 1231 income is treated as ordinary income for purposes of applying §1.1502-22(c). Under §1.1502-22(c), the group's consolidated net capital gain determined by reference only to T's items is \$0. None of T's capital loss carryover from Year 1 may be taken into account in Year 2.

(c) *Recapture of ordinary loss.* [Reserved]

(d) *Effective date*—(1) *In general.* This section applies to gains and losses arising in the determination of consolidated net section 1231 gain or loss for taxable years for which the due date (without extensions) of the consolidated return is after June 25, 1999.

(2) *Application to prior periods.* See §1.1502-21(h)(3) for rules applicable to groups that applied the rules of this section to consolidated return years

ending on or after January 29, 1991, and beginning before January 1, 1997.

[T.D. 8823, 64 FR 36115, July 2, 1999; 64 FR 41784, Aug. 2, 1999]

### § 1.1502-24 Consolidated charitable contributions deduction.

(a) *Determination of amount of consolidated charitable contributions deduction.* The deduction allowed by section 170 for the taxable year shall be the lesser of:

(1) The aggregate deductions of the members of the group allowable under section 170 (determined without regard to section 170(b)(2)), plus the consolidated charitable contribution carryovers to such year, or

(2) Five percent of the adjusted consolidated taxable income as determined under paragraph (c) of this section.

(b) *Carryover of excess charitable contributions.* The consolidated charitable contribution carryovers to any consolidated return year shall consist of any excess consolidated charitable contributions of the group, plus any excess charitable contributions of members of the group arising in separate return years of such members, which may be carried over to the taxable year under the principles of section 170(b) (2) and (3). However, such consolidated carryovers shall not include any excess charitable contributions apportioned to a corporation for a separate return year pursuant to paragraph (e) of §1.1502-79.

(c) *Adjusted consolidated taxable income.* For purposes of this section, the adjusted consolidated taxable income of the group for any consolidated return year shall be the consolidated taxable income computed without regard to this section, section 242, section 243(a) (2) and (3), §1.1502-25, §1.1502-26, and §1.1502-27, and without regard to any consolidated net operating or net capital loss carrybacks to such year.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966]

### § 1.1502-26 Consolidated dividends received deduction.

(a) *In general.* (1) The consolidated dividends received deduction for the taxable year shall be the lesser of:

(i) The aggregate of the deduction of the members of the group allowable

under sections 243(a)(1), 244(a), and 245 (computed without regard to the limitations provided in section 246(b)), or

(ii) 85 percent of the consolidated taxable income computed without regard to the consolidated net operating loss deduction, consolidated section 247 deduction, the consolidated dividends received deduction, and any consolidated net capital loss carryback to the taxable year.

Subdivision (ii) of this subparagraph shall not apply for any consolidated return year for which there is a consolidated net operating loss. (See §§1.1502-21(e) or 1.1502-21A(f), as appropriate for the definition of a consolidated net operating loss.)

(2) If any member computes a deduction under section 593(b)(2) for a taxable year beginning after July 11, 1969, and ending before August 30, 1975, the deduction otherwise computed under this section shall be reduced by an amount determined by multiplying the deduction (determined without regard to this sentence and without regard to dividends received by the common parent if such parent does not use the percentage of income method provided by section 593(b)(2)) by the applicable percentage of the member with the highest applicable percentage (determined under subparagraphs (A) and (B) of section 593(b)(2)).

(3) For taxable years ending on or after August 30, 1975, the deduction otherwise computed under this section shall be reduced by the sum of the amounts determined under paragraph (a)(4) of this section for each member that is a thrift institution that computes a deduction under section 593(b)(2).

(4) For each thrift institution, the amount determined under this subparagraph is the product of:

(i) The portion of the deduction determined with regard to the sum of the dividends received by: (A) The thrift institution, and (B) any member in which that thrift institution owns, directly and with the application of paragraph (a)(5) of this section, 5 percent or more of the stock on any day during the consolidated return year, and

(ii) The thrift institution's applicable percentage determined under subparagraphs (A) and (B) of section 593(b)(2).

For purposes of this subparagraph, dividends allocated to a thrift institution under §1.596-1(c) shall be considered received by the thrift institution.

(5) For purposes of paragraph (a)(4)(i) of this section, a member owning stock of another member (the "second member") shall be considered as owning its proportionate share of any stock of a member owned by the second member. Stock considered as being owned by reason of the preceding sentence shall, for purposes of applying that sentence, be treated as actually owned. The proportionate share of stock in a member owned by another member is the proportion which the value of the stock so owned bears to the value of all the outstanding stock in the member. For purposes of this paragraph the term "stock" includes nonvoting stock which is limited and preferred as to dividends.

(6) For purposes of paragraph (a)(4)(i) of this section, if two or more thrift institutions that are both members of the group each owns 5 percent or more of the same member's stock, the member's stock will be considered to be owned only by the thrift institution with the highest applicable percentage.

(b) *Intercompany dividends.* The deduction determined under paragraph (a) of this section is determined without taking into account intercompany dividends to the extent that, under §1.1502-13(f)(2), they are not included in gross income. See §1.1502-13 for additional rules relating to intercompany dividends.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example 1.* Corporations P, S, and S-1 filed a consolidated return for the calendar year 1966 showing consolidated taxable income of \$100,000 (determined without regard to the consolidated net operating loss deduction, consolidated dividends received deduction, and the consolidated section 247 deduction). Such corporations received dividends during such year from nonmember domestic corporations as follows:

		Dividends
Corporation:		
P	.....	\$6,000
S	.....	10,000
S-1	.....	34,000
Total	.....	50,000

The dividends received deduction allowable to each member under section 243(a)(1) (computed without regard to the limitation in section 246(b)) is as follows: P has \$5,100 (85 percent of \$6,000), S has \$8,500 (85 percent of \$10,000), and S-1 has \$28,900 (85 percent of \$34,000), or a total of \$42,500. Since \$42,500 is less than \$85,000 (85 percent of \$100,000), the consolidated dividends received deduction is \$42,500.

*Example 2.* Assume the same facts as in example (1) except that consolidated taxable income (computed without regard to the consolidated net operating loss deduction, consolidated dividends received deduction, and the consolidated section 247 deduction) was \$40,000. The aggregate of the dividends received deductions, \$42,500, computed without regard to section 246(b), results in a consolidated net operating loss of \$2,500. See section 172(d)(6). Therefore, paragraph (a)(2) of this section does not apply and the consolidated dividends received deduction is \$42,500.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7631, 44 FR 40497, July 11, 1979; T.D. 8597, 60 FR 36710, July 18, 1995; T.D. 8677, 61 FR 33323, June 27, 1996; T.D. 8823, 64 FR 36099, July 2, 1999]

#### § 1.1502-27 Consolidated section 247 deduction.

(a) *Amount of deduction.* The consolidated section 247 deduction for the taxable year shall be an amount computed as follows:

(1) First, determine the amount which is the lesser of:

(i) The aggregate of the dividends paid (within the meaning of section 247(a)) during such year by members of the group which are public utilities (within the meaning of section 247(b)(1)) on preferred stock (within the meaning of section 247(b)(2)), other than dividends paid to other members of the group, or

(ii) The aggregate of the taxable income (or loss) (as determined under paragraph (b) of this section) of each such member which is a public utility.

(2) Then, multiply the amount determined under subparagraph (1) of this paragraph by the fraction specified in section 247(a)(2).

(b) *Computation of taxable income.* For purposes of paragraph (a)(1)(ii) of this section, the taxable income (or loss) of a member of the group described in paragraph (a)(1)(i) shall be determined under § 1.1502-12, adjusted for the following items taken into account in the

computation of consolidated taxable income:

(1) The portion of the consolidated net operating loss deduction, the consolidated charitable contributions deduction, and the consolidated dividends received deduction, attributable to such member;

(2) Such member's capital gain net income (net capital gain for taxable years beginning before January 1, 1977) (determined without regard to any net capital loss carryover or carryback attributable to such member);

(3) Such member's net capital loss and section 1231 net loss, reduced by the portion of the consolidated net capital loss attributable to such member; and

(4) The portion of any consolidated net capital loss carryover or carryback attributable to such member which is absorbed in the taxable year.

[T.D. 6894, 31 FR 11794, Sept. 8, 1966, as amended by T.D. 7728, 45 FR 72650, Nov. 3, 1980]

#### § 1.1502-28 Consolidated section 108.

(a) *In general.* This section sets forth rules for the application of section 108(a) and the reduction of tax attributes pursuant to section 108(b) when a member of the group realizes discharge of indebtedness income that is excluded from gross income under section 108(a) (excluded COD income).

(1) *Application of section 108(a).* Section 108(a)(1)(A) and (B) is applied separately to each member that realizes excluded COD income. Therefore, the limitation of section 108(a)(3) on the amount of discharge of indebtedness income that is treated as excluded COD income is determined based on the assets (including stock and securities of other members) and liabilities (including liabilities to other members) of only the member that realizes excluded COD income.

(2) *Reduction of tax attributes attributable to the debtor—(i) In general.* With respect to a member that realizes excluded COD income in a taxable year, the tax attributes attributable to that member (and its direct and indirect subsidiaries to the extent required by section 1017(b)(3)(D) and paragraph (a)(3) of this section), including basis of assets and losses and credits arising in